

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**936 CRIMINAL WRIT PETITION NO.1444 OF 2022
ALIS BAIG HASIB BAIG
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.Suraj R. Bagal h/f. Mr. B.N. Gadegaonkar, Advocate for the petitioner.
Mr.PN. Kutti, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 02.02.2023

PC :-

01. This is a petition challenging the order passed by the learned Additional Sessions Judge-4, Parbhani dismissing Criminal Appeal No.47 of 2022. The order passed by the Collector, Parbhani under the Essential Commodities Act was under challenge. The Collector by order dated 03.08.2022 confiscated 487 bags of rice. It is allegation by the Gangakhed Police that they found one truck driven by Akash Sasane and one Rajesh Deokate, who was cleaner on the said vehicle. 487 bags were carried in the vehicle. A secret information was received that the rice which is being transported was for the purpose of public distribution. The truck and the rice were seized. Report was made to the Collector.

02. The Collector proceeded under section 6(B) of the Essential

Commodities Act and sent notice to the petitioner. The petitioner submitted say stating that it was rice purchased by him. He also produced on record copy of delivery challan and bill showing that he has purchased raw rice of 255.10 qtl. quantity at the rate of Rs.1985/- per qtl. by paying total amount of Rs.5,06,373/-. He submitted that the rise is not from public distribution system. However, the learned Collector by observing that the bags were having mark as Pandurang Sahakari Sakhar Karkhana, Shripur, Solapur, sent the sample to the lab. However, in absence of expert's report, the Collector though it fit not to release the rice and directed to putforth seize the rice.

03. Against the order of the Collector, the petitioner filed appeal in the Sessions Court at Parbhani on various grounds. He relied upon proviso to Section 6-A of the Essential Commodities Act. He further submitted that when the receipts are produced towards purchase of rice, it should have been returned to him. The learned Sessions Judge, however, observed that in absence of report of the expert it cannot be concluded that whether the said rice is from public distribution system or not and dismissed the appeal.

04. During the pendency of the petition, it is now submitted that the

report is received. However, same is inconclusive. The learned Advocate for the petitioner submits that since report received is inconclusive and when there is no specific report that the rice is from public distribution system, this Court may allow the petition by directing to release the rice in his favour. He submits that there is no expert's report. The whole action itself is illegal and the rice could not have been confiscated.

05. Heard learned APP for the respondent/State. He submits that report dated 07.12.2022 of Rice Expert from Regional Agricultural Research Center, Raigad is received, wherein he found that the rice in Exh.A & B are similar. So far as rice of Exh. "C" is concerned, it is opined that it cannot be said to be from Public Distribution System as the rice from Public Distribution System is not made available. Thus, from this report it is also clear that as on today, there is no conclusive evidence to show that the rice which is seized and now confiscated is from Public Distribution System.

06. This Court finds that the petitioner cannot be made to wait for indefinite period for getting conclusive report from the lab. One thing is certain that as on today there is no report showing that the said rice is from

the Public Distribution System. On the contrary, the petitioner has produced on record bill towards purchase of rice.

07. Considering the above, this Court finds that the impugned order can be set aside by directing the respondents to release the rice in favour of the petitioner on certain conditions :-

08. Hence, the following order is passed :-

ORDER

- (i) The writ petition is partly allowed.
- (ii) The respondent-authorities shall return the rice to the petitioner by retaining 5 (five) bags for sample and testing purpose.
- (iii) The petitioner shall furnish bank guarantee of Rs.3 lakhs with police and will keep it live till final decision is taken by the Collector, Parbhani or for a period of one year, whichever is earlier.
- (iv) With above directions the petition is disposed off.

[KISHORE C. SANT, J.]